IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16396 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ASHPI MANCHERSHA DADABHAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 16396 of 2003

MR HR PRAJAPATI for Petitioner No. 1

MS. PAURAMI SHETH, LD. AGP for Respondent No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE N.G.NANDI

Date of decision: 29/01/2004

ORAL JUDGEMENT

1. In this petition under Article 226 of the

Constitution of India, the petitioner has been challenging the order of detention dated 4-2-2003 (Annexure-A) passed by respondent no.2 under the provisions of Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act 1980 ('PBM Act'), as illegal, invalid, null & void, arbitrary, suffering from non application of mind and violative of Article 14, 21 and 22 of the Constitution of India.

2. The petitioner has been dealing in solvent in the name & stye of M/s. Hira Petrochemicals Pvt. Ltd. Village Patonda, Taluka & District Nandurbar, Maharashtra State; that the Jt. Director (investigation), Ministry of Petroleum & Natural Gas, New Delhi, Anti Adulteration Cell carried out surprise checking on 23-12-2002 of Tanker No. GJ-5/V-4846 near hotel Satlej, Ankleshwar. At that time certain irregularities and illegalities were found with respect to bill for Rs.1,42,800/- in the name of M/s. Shantinath Chemicals, Khewar Road, Bahdgadh, Sonepat, Hariyana. The case was then handed over to Mamlatdar, Ankleshwar for further inquiry. On Mamlatdar's inquiry with the tanker driver it was revealed that the seized quantity of 12 KL O.C.S. hydro carbon stored in the said tanker was worth Rs.1,65,648/-, and the said tanker also contained stock of solvent. Mamlatdar, Ankleshwar, therefore carried out detailed and thorough inquiry and samples of the petroleum liquid were taken and sent to the laboratory for analysis and it has been reported that the seized liquid stock is of petroleum hydrocarbon liquid. It was also revealed from the statement of driver Montu Yadav that the bill of solvent was fake one and the stock in tanker was not to be sent to Nandarbar, Sonepath Hariyana but was to be emptied at petrol pump in Ankleshwar as per instructions of his employer. During the investigation it was also revealed that the name of Shri. Mahendra Singh Daulatsingh Panjrolia was recorded as the owner of the aforesaid tanker R.C. Book and the said tanker has been transferred by giving false address of the tanker owner without any consultation. All these culminated into passing of the impugned detention order.

3. Learned AGP has placed on record affidavit in reply by respondent No. 1 to 3 and Ms. PJ Davawala, Learned Addl. Counsel for Central Govt. has placed on affidavit on behalf of respondent No.4. Both are kept on record.

4. It has been submitted by Mr. Prajapati that as per para-9 of the affidavit in reply of respondent no.2, respondent no.2 after passing the order sent the same to

respondent no.1 for his approval. Respondent no.1 granted its approval on 15-2-2003 and has communicated vide order dated 15-2-2003 which was received by the office of respondent no.2 on 17-2-2003. Further more the fact that the petitioner has been detained on 18-11-2003 was also reported to respondent no.1 on 20-11-2003. The petitioner as per his representation dated 22-11-2003 which was received by the office of respondent no.2 on 28-11-2003 which in turn forwarded to the concerned authority on 8-12-3003. From this it is submitted by Mr.Prajapati that there is delay of 10 days in forwarding the representation filed by the petitioner, and that the said delay remains unexplained as the affidavit in reply does not attempt to explain the delay of 10 days.

5. Reliance has been placed on the decision in case of Rajammal (appellant) Vs. State of Tamil Nadu & Anr, AIR 1999 SC pg. 684, to contend that unexplained delay would vitiate the detention order.

In para-9 it has been observed by the Apex Court as under:-

" The position, therefore, now is that if delay was caused on account of any indifference or lapse in considering the representation such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned."

In the facts of the case before it, the Supreme Court held that, unexplained delay of five days in considering and disposing detenu's representation would vitiate the detention. "

6. In the instant case respondent no.2 has filed affidavit in reply, the same does not suggest any explanation for the delay of 10 days in considering the representation filed by the detenu. Thus the delay of 10 days in considering the representation filed by the petitioner detenu remains unexplained.

7. Under the circumstances the unexplained delay of 10 days in considering the representation of the petitioner would vitiate the detention order following

the principle laiddown in the case of Rajammal Vs. State of Tamil Nadu (supra).

8. In the result the petition is granted. The order of detention dated 4-2-2003 (Annexure-A) passed by Respondent No.2 under the provisions of Prevention of Black Marketing & Maintenance of Supplies of Essential Commodities Act, 1980, is set aside and quashed. The petitioner detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule made absolute. Direct service permitted.

Dt: 29-1-2004 (N.G. Nandi, J)

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